

JUDICIAL MATTERS AMENDMENT BILL, 2016 (BILL 14 OF 2016): SUMMARY OF COMMENTS RECEIVED AND RESPONSES THERETO

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<p>Clause 2: Clause 2 deletes section 12(7) of the Magistrates' Courts Act, 1944, so as to do away with the requirement that only a magistrate of a regional division whose name appears on the list referred to in subsection (7), may adjudicate on disputes contemplated in section 29(1) (civil disputes) or 29(1B) (divorce matters), in accordance with the criteria set out in subsection (8). The clause also effects consequential amendments to subsections (6) and (8). The amendments to subsections (6) and (8) provide that Regional Court Presidents must now designate appropriately qualified magistrates to adjudicate on civil disputes in regional courts.</p>	<p>Commission for Gender Equality (CGE): According to the CGE no mentioning is made to gender equity considerations when the magistrate at the head of a regional division appoints a magistrate to adjudicate on civil disputes. The CGE therefore recommends that the following provisions be inserted in section 12(8) of the Magistrates' Courts Act: "(d) the magistrate at the head of the regional division must ensure that gender imbalances of the past are addressed when making appointments in terms of this section".</p>	<p>(a) The proposed amendments mainly aim to do away with burdensome administrative procedures, in so far as it relates to the keeping of a list by the Magistrates Commission of persons who are competent to preside over civil disputes and divorce matters. It is submitted that the concerns of the CGE are already addressed in other legislation, which deals with employment equity and discrimination based on gender, among others, section 9(2) of the Constitution of the Republic of South Africa, the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000), and the Employment Equity Act, 1998 (Act 55 of 1998).</p>
<p>Clause 3: The clause amends section 2 of the State Liability Act, 1957, in order to -</p>	<p>CGE: The requirement that the plaintiff must cite the executive authority of the</p>	<p>(a) With reference to certain expressions which are regarded as unclear, the following -</p>

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<p>(a) do away with the restrictive application of the Act to proceedings arising out of contract or delict and to ensure that it will be applicable to all proceedings, for instance joinder and review applications (section 2(1));</p> <p>(b) provide that—</p> <p>* court process should be served on the head of the department concerned; and</p> <p>* a copy of the process should, within 5 days after the service of process on the head of the Department, also be served on the State Attorney operating within the area of jurisdiction of the court from which the process was issued (section 2(2)); and</p> <p>(c) provide that the State Attorney must engage with the head of a department regarding proceedings (new section 2(3))</p>	<p>Department as a nominal defendant prejudicial affects the rights of the plaintiff for the following reasons:</p> <p>(a) The reference to “executive authority”, “a nominal defendant” and a “State Department”, is unclear and it may contribute to the citing of a wrong party; and</p> <p>(b) where departments are represented in provinces it may not always be practical to serve process on the Head Office.</p> <p>CGE proposes the following amendments to section 2 of the State Liability Act:</p> <p>(a) section 2(1) must be amended by the substitution for the expression “nominal defendant” of the expression “defendant in a representative capacity”;</p> <p>(b) section 2(2)(a) must be amended to provide for the service of process on the national, provincial or regional head of the department who is located closest to the court which has issued the relevant proceedings or notice; and</p>	<p>(i) “executive authority” is defined in section 4A of the State Liability Act and means in relation to -</p> <p>* a national department, the Cabinet member who is accountable to Parliament for that department; and</p> <p>* a provincial department, the member of the Executive Council of a province who is accountable to the provincial legislature for that department;</p> <p>(ii) “department” is also defined in section 4A of the State Liability Act as a national or provincial department; and</p> <p>(iii) “nominal defendant” has a legal technical meaning and is used to describe a person or entity that has a technical nexus to a dispute, who must be cited as a party in the dispute in order for the court to properly decide the dispute, and who did not cause or contributed to the cause of action. The expression “nominal defendant” and “defendant in a representative capacity” is the same. See among others, JAYIYA v MEMBER OF THE EXECUTIVE COUNCIL FOR WELFARE, EASTERN CAPE, AND ANOTHER 2004 (2) SA 611 (SCA) at paragraph 5:</p>

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	<p>(c) a "national, provincial or regional head of the department be defined as to include without limitation "a Director-General, Chief Executive Officer, National Commissioner or Provincial Commissioner and Member of Executive Council (MEC)".</p>	<p>"A litigant brings a national or provincial department before court by citing the political head of the department in a representative capacity. In the case of a department of the National Government, this would be the responsible Minister. In the case of a provincial department it is the responsible member of the executive council. That is what s 2 of the State Liability Act 20 of 1957 provides."</p> <p>(b) <u>The primary aim of the amendments to section 2 of the State Liability Act, is to address the magnitude of default judgments which are obtained against Government departments due to the fact that departments fail to oppose litigation against them.</u> One of the major contributing factors that gives rise to default judgments is the fact that court process is served on persons who fail to bring this to the attention of the persons who are supposed to deal with litigation against the State. Various departments have a provincial presence. The fact that process is served on a person at a provincial branch of a national department does not mean that this will be brought to the attention of the persons that deal with litigation against a national department, resulting in a</p>

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		<p>default judgment against the department in question. The amendment aims to ensure that process is served on the head of a department at the head office of a department. The head of a department is under an obligation to deal with litigation against his or her department. <u>The amendments proposed by clause 5 to section 4A of the State Liability Act, comprehensively defines a "head of department", with reference to the incumbent of a post mentioned in Column 2 of Schedule 1, 2 or 3 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), and includes any employee acting in such post.</u></p>
<p>Clause 4: Clause 4 aims to complement the amendments proposed to section 2(2), by providing a further safety measure for departments by requiring that the clerk or registrar may only issue a warrant of execution or writ of execution against the State in terms of section 3(6) where default judgments have been granted, if they are satisfied that section 3(4), has been complied with. Section 3(4), among others provide that where a department fails to pay a judgment debt, the judgment creditor must serve the court order on</p>	<p>CGE: The proposed amendment is supported.</p>	<p>Noted</p>

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the executive authority and accounting officer of the department, the State Attorney or attorney of record appearing on behalf of the department concerned and the relevant treasury.		
<p>Clauses 3, 4 and 5: (Clauses 3 and 4, are discussed above). Clause 5 - (a) inserts definitions of “day” and “head of department”; and (b) substitutes the definition “Rules of Court”, in section 4A of the State Liability Act, 1957.</p>	<p>CGE: No definitions are provided for in the State Liability Act, as amended, save for cross references to terms such as “head of department “as well as the word “day”. This creates ambiguity and confusion regarding key terms such as “nominal defendant”, “head of department”, etc. The CGE recommends that definitions should be inserted in the State Liability Act.</p>	<p>Various applicable phrases are defined in section 4A of the State Liability Act. Criticism relating to definitions is discussed under the discussion of clause 3, above. The word “day” is addressed in clause 5(a) of the Bill which amends the current definition of “day” to ensure that it is consistent with the definition in the Superior Courts Act, 2013.</p>
<p>Clause 6: Clause 6 amends section 103(1) of the Administration of Estates Act, 1965, in order to empower the Minister to make regulations regarding persons, including juristic persons, or categories of persons who may liquidate and distribute deceased estates.</p>	<p>Law Society of South Africa (LSSA) The administration of deceased estates is complex and various laws, among others, the Income Tax Act, the Estate Duties Act, the Subdivision of Agricultural Land Act, the Intestate Succession Act, pension laws, the law of contracts, the Road Accident Fund Act, customary law, fire arms laws, water rights, law of trusts, the Deeds Registries Act, the Sectional Titles Act, etc., need to be taken into account in</p>	<p>It is not necessary to specifically provide in the proposed amendment to section 103 of the Administration of Estates Act, that guidelines should be developed which must be taken into account in the making of the proposed regulations. Regulations must ensure that primary legislation can be implemented functionally. It would be irrational to make regulations which empower persons who are not qualified to liquidate and distribute deceased estates to exercise such powers. These</p>

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	<p>the liquidation and distribution of deceased estates. It is therefore absolutely necessary to appoint executors or estate representatives that have appropriate legal knowledge. Furthermore, executors or estate representatives are in a fiduciary position. The LSSA recommends that guidelines should be made which the Minister should take into consideration when making regulations regarding persons or categories of persons who may liquidate and distribute deceased estates.</p>	<p>guidelines can be developed on an informal basis during consultation with parties which have an interest in the Administration of Estates Act. Information which is provided during the consultation phase will form the basis of the regulations which the Minister will make in terms of the empowering clause. It is acknowledged that persons and entities that deal with the liquidation and distribution of deceased estates are in a fiduciary position. This aspect will be taken into account when the regulations are drafted.</p>
<p>Clause 8(d): Clause 8(d) amends section 18 of the Criminal Procedure Act, 1977, by the addition of the paragraph (j) to provide that the offence of torture as contemplated in section 4(1) and (2) of the Prevention and Combating of Torture of Persons Act, 2013, does not prescribe after a period of 20 years has lapsed..</p>	<p>Civil Society Prison Reform Initiative The organization agrees with the proposed amendment which addresses their concern that the offence of torture should not be subject to a statutory limitation clause.</p>	<p>Noted</p>
<p>Clause 9: Clause 9 amends section 184(1) of the Criminal Procedure Act, 1977, in order to provide for a less invasive process,</p>	<p>CGE: The proposed amendment is supported</p>	<p>Noted</p>

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<p>other than arrest and detention, to ensure the availability of a witness who is likely abscond, to give evidence in proceedings involving an offence referred to in Part III of Schedule 2 to the Criminal Procedure Act.</p>		
<p>Clause 10: Clause 10 inserts section 194A in the Criminal Procedure Act, in order to provide that where the competency of a witness is in dispute in criminal matters, the court may order that a witness be examined by a medical practitioner, a psychiatrist or clinical psychologist designated by the court, in order to determine whether the witness is competent to give evidence. The clause further provides for the remuneration of a medical practitioner, a psychiatrist or clinical psychologist.</p>	<p>CGE: The proposed amendment is supported.</p>	<p>Noted</p>
<p>Clause 17: Clause 17 of the Bill seeks to amend section 2 of the Sheriffs Act, 1986, by adding a new subsection (3), to provide that where the office of a sheriff in an area remains vacant after the prescribed procedures for recruiting and appointing a fit and proper</p>	<p>CGE: According to CGE, a further requirement which the Minister must take into account for the purposes of the appointment of a sheriff, as contemplated in section 2(3) of the Sheriffs Act, is the promotion of gender equity and which must specifically be</p>	<p>This aspect is addressed in the discussion of clause 2. Although the Sheriffs Act comprehensively deals with all aspects relevant to the sheriffs' profession, it is submitted that other legislation sufficiently caters for the promotion of gender equity and need not specifically be included in the Sheriffs Act.</p>

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<p>applicant have been followed, the Cabinet member responsible for the administration of justice may, if he or she deems it necessary to achieve the objectives of effective and sustainable service delivery and in the interests of justice—</p> <p>(a) on request or after consultation with an Advisory Committee; and</p> <p>(b) after consultation with the Board,</p> <p>in writing, appoint a sheriff of another area to serve as sheriff within such area, subject to written confirmation by the Board that it is prepared to issue a fidelity fund certificate to that sheriff.</p>	<p>included in the proposed amendment.</p>	
<p>Clause 18: Clause 18 of the Bill seeks to amend section 3(2) of the Sheriffs Act in order to provide that the Cabinet member responsible for the administration of justice may describe one or more areas within the area of jurisdiction of a lower or superior court and allocate any such area to a sheriff of that court or a sheriff of another court after consultation with the Board and if the Board is prepared</p>	<p>CGE: According to CGE, the Minister must appoint a sheriff with due regard to the overall gender representation of women as sheriffs.</p>	<p>This aspect is addressed in the discussion of clause 2.</p>

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to issue a fidelity fund certificate to that sheriff.		
<p>Clause 24: Clause 24 amends section 13 of the Magistrates Act, 1993, so as to extend the age of retirement of magistrates from 65 to 70 years if magistrates so choose.</p>	<p>CGE: The proposed amendment is supported.</p>	
<p>Clause 30: Clause 30 amends section 1 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, by the inclusion in paragraph (a) of the definition of "prohibited grounds", the HIV/AIDS status of a person.</p>	<p>CGE: The proposed amendment is supported.</p>	
<p>Clause 37: Clause 37 seeks to substitute section 55A of the Sexual Offences Act (the SOA) to effect the following amendments, which are mainly of a technical nature:</p> <p>(a) It is proposed that the expression "exclusively" which appears in section 55A(1) be deleted. After the enactment of section 55A, concerns were raised that the expression "exclusively" in section 55A(1) gives rise to</p>	<p>Rape Crisis Centre & Women's Legal Centre (RCC)</p> <p>1. (a) The RCC criticises the fact that the establishment of sexual offences courts has been delayed for four years.</p>	<p>(a) By way of background to the proposed amendment, the delay in the coming into operation of section 55A is occasioned by the requirement for the designation of sexual offences courts "exclusively". This gives rise to interpretation and implementation problems. These problems, some of which were raised by Regional Court Presidents can be summarised as follows:</p> <p>(i) the legal challenge to the implication of the</p>

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<p>interpretation problems because it does not empower the Minister to designate a court room but a court. It is therefore argued that if, for example, the regional court Pretoria is designated, then it will have the effect that that court, despite the provisions of section 89 of the Magistrates' Courts Act, 1944, cannot hear any offence other than the sexual offences contemplated in section 55A(1). Concerns were also raised that it is not practical to limit the use of well-equipped courts to cases involving sexual offences only. It was argued that court facilities and court-time must be maximised in order to prevent a further backlog in the finalisation of cases. In similar vein, it has been pointed out that it may not be practical to deal exclusively with sexual offences in such a sexual offences court. An accused may have committed various other offences which do not amount to, or have a bearing on, sexual offences in respect of which he or she is being prosecuted. The proposed amendments also cater for this eventuality and provide that in</p>		<p>designation of a court as an "exclusive" sexual offences court may result in technical arguments being raised by representatives for the accused. Where a court is designated as such, it may not hear any other matters which are non-sexual offences-related. The process and effect of designation is done per court and not per court room;</p> <p>(ii) sexual offences may have been committed with other offences and an "exclusively" designated sexual offences court cannot hear the other matters. Splitting of the hearing of matters will exacerbate the problem of secondary victimisation as victims of sexual offences will have to face the accused more than once for the hearing of the other matters;</p> <p>(iii) a court exclusively designated to hear sexual offences matters may also have too many matters on the roll and if other courts are not designated as such, these courts will not be in a position to hear these matters, and neither are prosecutors who are appointed in sexual offences courts able to assist in these matters. Backlogs in the hearing of sexual offences matters could potentially be greater.</p> <p>(iv) where an exclusively designated sexual offences court's roll collapses, then such a court will not be in a position to hear other matters.</p>

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<p>circumstances such as these, all the matters can be dealt with by the same court and do not have to be prosecuted separately. The amendments proposed in subsection (1) address these concerns and provide that the Minister may, by notice in the <i>Gazette</i>, designate a Division of the High Court or a Magistrate's Court at which a sexual offences court must be established for purposes of the trial of any person or other proceedings arising out of—</p> <ul style="list-style-type: none"> (i) a sexual offence; (ii) any offence in terms of any other law which has a bearing on sexual offences or which involves the complainant against whom a sexual offence contemplated in item (i) is alleged to have been committed; or (iii) any offence in terms of any other law which the Director of Public Prosecutions having jurisdiction, or a prosecutor authorised thereto in writing by him or her deems expedient or necessary for the administration of justice in a 		<p>These matters, though not sexual offences related, equally involve victims of crime who are entitled to the expeditious hearing of their matters, where resources are available to be put to use. In other words, the question is the optimal use of scarce resources to serve victims of crime;</p> <p>(v) the wording of the proposed amendment in relation to "prioritisation" of cases and the issuing of directions should be considered as this places the management of court rolls in the hands of the relevant Head of Court.</p> <p>A further question that arises is whether the removal of the exclusive designation of courts and replacing it with prioritisation does not achieve the same objective of ensuring that sexual offences matters get the desired special attention that they deserve in the courts. The Department is of the view that the proposed amendment does not offend against that intention but in fact supports it and will ensure the implementation of an important element of legislation dealing with sexual offences courts.</p> <p>These points are explored further, below.</p>

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<p>particular case, to be disposed of together with an offence contemplated in item (i).</p> <p>(b) Amendments to the consultation requirements contained in section 55A(2) have been proposed due to submissions made to the Department in which it is argued that section 8(4)(c) of the Superior Courts Act confines the responsibility of a Judge-President to the co-ordination of the judicial functions of all magistrates' courts falling within the jurisdiction of that Division. Therefore, regional court presidents should be consulted before a regional court is designated as a sexual offences court as they are responsible for the management of the judicial functions in the regional courts. The same argument applies to district courts.</p> <p>(c) A new subsection (6) is proposed to make it clear that in order to deal appropriately with sexual offences cases in sexual offences courts, certain facilities, measures and services, to be</p>	<p>(b) The RCC criticises the fact that the word "exclusively" is omitted from section 55A(1) of the SOA, which will give rise to hybrid sexual offences courts (courts that primarily hears sexual offences but also other matters) being established which is contrary to the recommendations of the Report on the Re-Establishment of Sexual Offences Courts, that envisaged the establishment of courts to deal exclusively with sexual offences. RCC submits that this will adversely affect the victims of sexual offences. With reference to the motivation provided in the Memorandum on the Objects of the Bill, the RCC is of the opinion that:</p> <p>* Section 55A(1), indeed limits the Minister's powers to designate a court only as opposed to a court room, but argues that the defect can be remedied without omitting the word "exclusively".</p> <p>* The concern that it is not</p>	<p>(b) The amendments to section 55A are intended to make it clear that sexual offences courts are primarily established for the purposes of the trial of any person or other proceedings arising out of -</p> <p>* a sexual offence;</p> <p>* an offence which has a bearing on a sexual offence; or</p> <p>* other offences which can, in the interests of justice, be disposed together with a sexual offence or an offence which has a bearing on a sexual offence as is specifically authorised by a Director of Public Prosecutions.</p> <p>However, taking capacity constraints into consideration, these courts must also be able to deal with other cases when the sexual offences cases on their court rolls have been dealt with. For this reason it is advisable to have a statutory provision obliging the court officials in these courts to deal with these other cases in the court room of a sexual offences court as and when the need arises. The proposed new subclauses (7) to (9) seek to ensure that sexual</p>

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<p>prescribed by the Minister in terms of section 67, must be in place and be complied with.</p> <p>(d) The proposed new subsections (7), (8) and (9) are intended to ensure that sexual offences cases will receive priority in sexual offences courts, in accordance with directives issued by the heads of courts and by requiring the involvement and oversight by the Chief Justice. These amendments seek to ensure that sexual offences cases are dealt with expeditiously.</p>	<p>practical to limit the use of well-equipped courts to cases involving sexual offences only, does not justify the exclusion of the word “exclusively”, since a Director of Public Prosecutions is responsible for case flow management and can control the placing of cases with regard to which specialised personnel or equipment is needed.</p> <p>* Although court facilities and court time must be maximised in order to prevent a further backlog in the finalisation of cases, this can be achieved through case flow management and it is not necessary to remove the word “exclusively”.</p> <p>* Although it may be necessary to prosecute a person in the same proceedings for other offences which may not amount to a sexual offence, it is not necessary to remove the word “exclusively”, since a Director of Public Prosecutions may decide what other offences should be disposed of together with a sexual offence.</p>	<p>offences matters get the priority attention they deserve.</p> <p>Because the word “exclusively” has been omitted from section 55(A)(1) of the SOA in order to address interpretation challenges as pointed out in paragraph 2.32(a) of the Objects Memorandum, the effect is that a court may sit as a sexual offences court but also as a court to hear other matters.</p> <p>The proposed amendments provide leeway to give effect to the Report on the Re-Establishment of Sexual Offences Courts, where it was recommended that:</p> <p>“Sexual Offences Courts must be re-established either as Sexual Offences Courts or Hybrid Sexual Offences Courts. A Sexual Offences Court is defined as a regional court that deals exclusively with cases of sexual offences, while a hybrid Sexual Offences Court may be established in court buildings where space is a serious challenge. The Hybrid Sexual Offences Court is defined as a regional court dedicated for the adjudication of sexual offences cases in any specified area. It is a court that is established to give priority to sexual offences cases, whilst permitted to deal with other cases. However, it must be noted that the concept of the Hybrid Sexual Offences Courts is considered as an interim measure to ensure access to justice to all witnesses where the local court building cannot accommodate all the features of the Sexual Offences Court Model or the</p>

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	<p>(c) The RCC recommends an amendment to ensure that all sexual offences cases in the jurisdiction of an established sexual offences court must be tried by that sexual offences court.</p> <p>(d) The RCC supports the amendments to section 55A(2).</p> <p>(e) The proposed section 55A(6) is also supported by RCC. However, the absence of clear time frames is criticised.</p> <p>(f) Since the RCC does not support</p>	<p>number of sexual offences do not justify an exclusive court roll of sexual offences. There must, therefore, be a progressive establishment of the Hybrid Sexual Offences Courts into Sexual Offences Courts.” (Recommendation 1 under paragraph 7 of the Report)</p> <p>(c) It may not be practical to hear each and every sexual offence committed within the area of jurisdiction of a regional division in a designated sexual offences court. Considerations such as the convenience and means of witnesses and persons who support the victim to attend proceedings and the preferences of the complainant need to be taken into account in deciding on an appropriate court.</p> <p>(d) Noted</p> <p>(e) Noted</p> <p>(f) Noted</p>

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	<p>hybrid sexual offences courts, they do not support the proposed section 55(7),(8) and (9) which provides for the issuing of directives to ensure that sexual offences cases must be prioritised.</p> <p>2. A meeting between the Deputy Minister, regional court presidents, the Department and the RCC, took place on 18 May 2017 to further discuss their views as summarised above. The RCC is still not convinced that the current wording as suggested in the Bill serves the interests of victims of sexual offences. According to the RCC, the legislation relating to sexual offences courts should seek to realise the sentiments expressed in the Preamble to the SOA, which, among others, commits to affording complainants of sexual offences the maximum protection that the law can provide. The RCC proposes the following amendments to the SOA:</p> <p>(a) The following definition of sexual offences courts should be inserted in the SOA:</p>	<p>2.(a) The purpose of a definition is to clarify or facilitate the further interpretation of a word or phrase within the legislation. If the word or phrase is clear within the context within which it is used, it is not necessary to further define the word or phrase. A definition should not contain substantive provisions. The proposed definition of the RCC is essentially a substantive provision. The proposed section 55A already determines the jurisdiction of sexual offences courts in relation to offences, and it is not necessary to insert a separate definition in the SOA to clarify this aspect. The RCC proposes that a sexual offences court be defined as a court with a "court roll that exclusively deals with trial proceedings". The definition of RCC constitutes the outcome of a management process to define a sexual offences court. The question arises how other proceedings for instance bail applications, plea proceedings, sentencing proceedings, proceedings in terms</p>

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	<p>“A sexual offences court is a court that has a court roll that exclusively deals with trial proceedings arising out of -</p> <p>(a) an alleged commission of a sexual offence in terms of the common law, any offence in terms of the Sexual Offences Act, 1957 (Act No. 23 of 1957), or any offence in terms of this Act;</p> <p>(b) any offence in terms of any other law which has a bearing on sexual offences contemplated in subparagraph (a), or which involves the complainant against whom a sexual offence contemplated in subparagraph (a) is alleged to have been committed; or</p> <p>(c) any offence in terms of any other law which the Director of Public Prosecutions having jurisdiction, or a prosecutor authorised thereto in writing by him or her, deems expedient or necessary for the administration of justice in a particular case, to be disposed of together with an offence contemplated in subparagraph (a), and which has facilities, services, devices and equipment, and personnel which the Minister shall provide for in regulations.”.</p> <p>(b) Section 55A(1) should be amended to provide as follows: “(1) Subject to subsection (2), the Minister</p>	<p>of Chapters 19, 19A and 20 of the Criminal Procedure Act (plea in a magistrate’s court on a charge justiciable in the High Court or regional court or a preparatory investigation), should be dealt with in terms of the proposed definition. The proposed amendment to section 55A(1) caters for “other proceedings” as well. It is further not necessary to include a reference to the “court roll”, since the proposed amendments to section 55A(1), make it clear that a sexual offences court may only deal with sexual offences and offences which must, in the interests of justice, be disposed of together with a sexual offence. The reference in the proposed definition to “sexual offences courts” to “facilities, services, devices and equipment, and personnel which the Minister shall provide for in regulations” as suggested by RCC ” is already catered for in the proposed section 55A(6). However, a proposed amendment which caters for the proposals of the RCC, has been drafted and is attached as Annexure A</p> <p>(b) This proposal is the same as the current provision with the exclusion of Items (i) to (iii), which is now dealt with in terms of the definition</p>

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	<p>may by notice in the <i>Gazette</i> designate any—</p> <p>(a) Division of the High Court of South Africa or the main seat or any local seat of a Division referred to in section 6 of the Superior Courts Act, 2013 (Act No. 10 of 2013); or</p> <p>(b) Magistrate's Court, as defined in section 1 of the Superior Courts Act, 2013 [(Act No. 10 of 2013)],</p> <p>[as] at which a sexual offences court must be established .".</p> <p>(c) The RCC is of the opinion that the concerns which were raised by the regional court presidents that the establishment of sexual offences courts that will deal exclusively with sexual offences will preclude other courts from hearing sexual offences matters are incorrect. According to the RCC, it is clear from the formulation of the Bill that this is not the case and this should therefore not contribute to overflowing of court rolls. The RCC suggests that a directive may need to be issued to clarify the matter.</p>	<p>proposed by RCC.</p> <p>(c) The proposed section 55A(5) provides that other courts not designated as sexual offences courts may hear sexual offences cases.</p>

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	<p>(d) The RCC proposes that the regulations which should be made in terms of the proposed section 55A(6), should deal with the facilities, services, devices and equipment and personnel provided for sexual offences courts. The RCC suggests that this must take into account the discrepancies in the allocation of resources which sometimes exist in different provinces.</p> <p>(e) The RCC suggests that the regulations should also deal with the eventuality of sexual offences court rolls falling flat due to unforeseen circumstances and if there is a need to clarify the prioritisation in sexual offences courts, the regulations also need to do with that eventuality and not the directives as contemplated in the proposed section 55A(7).</p> <p>3. Regional Court President Limpopo</p> <p>(a) A definition of a sexual offences court, more in line with the following</p>	<p>(d) The regulations in terms of section 55A(6) will make provision for the required facilities and services that must be in place for sexual offences courts to function as envisaged in terms of the proposed clause. The view is held that the regulations cannot be used to address discrepancies in the allocation of resources in different provinces.</p> <p>(e) Case-flow management is the responsibility of the judiciary and should not be dealt with by way of regulations made by the executive.</p> <p>3(a) See the response of the Department on the proposed definition of sexual offences courts</p>

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	<p>definition of child justice court, found in the Child Justice Act might be a better solution –</p> <p>“child justice court” means any court provided for in the Criminal Procedure Act, dealing with the bail application, plea, trial or sentencing of a child;</p> <p>It is proposed that the first part of RCC’s definition should rather read: ‘sexual offences court’ means any court provided for in the Criminal Procedure Act, dealing with the plea, trial or sentencing of sexual offences case being -</p> <p>(i) an alleged commission of a sexual offence in terms of the common law, any offence in terms of the Sexual Offences Act, 1957 (Act No. 23 of 1957), or any offence in terms of this Act;</p> <p>(ii) any offence in terms of any other law which has a bearing on sexual offences contemplated in subparagraph (i), or which involves the complainant against whom a sexual offence contemplated in subparagraph (i) is</p>	<p>of the RCC.</p>

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	<p>alleged to have been committed; or (iii) any offence in terms of any other law which the Director of Public Prosecutions having jurisdiction, or a prosecutor authorised thereto in writing by him or her, deems expedient or necessary for the administration of justice in a particular case, to be disposed of together with an offence contemplated in subparagraph (i).</p> <p>Alternatively it is proposed that the definition should state 'case where there is any charge dealing with any sexual offence'</p> <p>According to this response, all courts dealing with the plea, trial or sentencing of a case where there is a charge dealing with a sexual offence, will be sitting as a sexual offences court and should then give priority to such cases, same as is done in Child Justice Courts.</p>	

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	<p>A case is further made out for the equipping of all courts with equipment and facilities to enable the hearing of matters through the CCTV system.</p> <p>Responses by other regional court presidents on the proposals by RCC:</p> <p>* Northern Cape: Civil society concerns can be dealt with through the use of a separate court roll for sexual offences matters and the adjudication of these two rolls separately even if dealt with by the same court on the same day. This, in my view, could be adequately addressed by the use of the word separately instead of exclusively in the proposed definition.</p> <p>* Two other regional court presidents agree with the proposal.</p>	